

## 37 Am. Jur. 2d Fraud and Deceit § 26

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### Fraud and Deceit

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### II. Elements and Requisites

#### A. Basis of Action

#### 2. Essential Elements of Action

## § 26. Misrepresentation

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### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  1 to 7, 26

Misrepresentation is generally defined as a falsehood or untruth made with the intent of deceit rather than inadvertent mistake.<sup>1</sup> To establish a misrepresentation claim, a plaintiff must prove: (1) the defendant made a representation; (2) the representation was false; (3) the representation related to a past or present fact; (4) the fact was material; (5) the fact was susceptible of knowledge; (6) the defendant either knew that the fact was false or asserted it as knowledge without knowing whether it was true or false; (7) the defendant intended the representation to induce the plaintiff to act or be justified in acting upon it; (8) the representation justifiably induced the plaintiff to act on it; (9) the plaintiff acted in reliance upon the representation; (10) the plaintiff suffered damage; and (11) the false statement proximately caused the plaintiff's injury.<sup>2</sup> A misrepresentation, which is a false or misleading statement that induces the recipient to act or refrain from acting, is actionable when it is made either with knowledge of its untruth, or recklessly and willfully without regard to its consequences, and with an intent to mislead and deceive the plaintiff.<sup>3</sup> To prevail on a claim for misrepresentation, a plaintiff must establish that the act claimed to be fraudulent was the act of the defendant; that it was material and false; that the plaintiff relied on it and was justified under the circumstances in relying upon it; and that the plaintiff was damaged because he or she relied on it.<sup>4</sup> For purposes of the requirement that the alleged misrepresentation cause the plaintiff's loss to be actionable as fraud, "cause" means legal or proximate cause, which consists of a finding of causation in fact or, in other words, substantial cause and the absence of a public policy rule of law which prohibits the imposition of liability.<sup>5</sup>

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### Footnotes

<sup>1</sup> [Kerwin v. Missouri Dental Bd.](#), 375 S.W.3d 219 (Mo. Ct. App. W.D. 2012), reh'g and/or transfer denied, (July 31, 2012); [Webb v. Stockford](#), 331 S.W.3d 169 (Tex. App. Dallas 2011), review denied, (Aug. 19, 2011).

<sup>2</sup> [McLain v. Andersen Corp.](#), 567 F.3d 956 (8th Cir. 2009) (applying Minnesota law).

<sup>3</sup> Brodeur v. American Home Assur. Co., 169 P.3d 139 (Colo. 2007).

<sup>4</sup> Jennings v. Farmers Mut. Ins. Co., 224 W. Va. 636, 687 S.E.2d 574 (2009).

<sup>5</sup> Flegles, Inc. v. TruServ Corp., 289 S.W.3d 544 (Ky. 2009).

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